



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2021-0750]

RIN 1625-AA00

### Safety Zone; Chesapeake Bay, Craighill Channel, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is extending the duration of a temporary safety zone on certain navigable waters of the Chesapeake Bay. This action is necessary to provide for the safety of persons and the marine environment from the potential safety hazards associated with the damage assessment and salvage of the grounded freight ship EVER FORWARD, through 9 p.m. on April 13, 2022. This rule prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port, Maryland-National Capital Region or a designated representative.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until 9 p.m. on April 13, 2022. For the purposes of enforcement, actual notice will be used from 9 p.m. on March 20, 2022, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0750 in the “SEARCH” box and click “SEARCH.” Next, in the Document Type column, select “Supporting & Related Material.”

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. Ron Houck, Sector Maryland-NCR, Waterways Management Division, U.S. Coast Guard: telephone 410-576-2674, email [Ronald.L.Houck@uscg.mil](mailto:Ronald.L.Houck@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

On March 14, 2022, the Coast Guard issued a final rule establishing a temporary safety zone on certain navigable waters of the Chesapeake Bay to protect persons and vessels during damage assessment and salvage operations at the grounded 1,102-foot Hong Kong-flagged motor vessel EVER FORWARD. The original rule runs through 9 p.m. on March 20, 2022. However, additional time is needed to conduct the damage assessment and salvage operations and, as a result, the Coast Guard needs to extend the safety zone through 9 p.m. on April 13, 2022. The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this extension because it would be impracticable and contrary to the public interest. The Coast Guard was unable to publish an NPRM and hold a reasonable comment period for this rulemaking due to the emergent nature of the

continuing damage assessment and salvage operations and required publication of this extension. Immediate action is needed to continue to protect persons and vessels from the hazards associated with carrying out damage assessment and salvage operations of the motor vessel EVER FORWARD that must occur within the federal navigation channel. It is impracticable and contrary to the public interest to publish an NPRM, because the extension needs to be in place by March 21, 2022.

We are issuing this rule under 5 U.S.C. 553(d)(3), and in accordance with 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest, because immediate action is needed to continue to respond to the potential safety hazards associated with damage assessment and salvage operations of the motor vessel EVER FORWARD being conducted within the federal navigation channel.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined there are potential hazards associated with damage assessment and salvage operations. The work is a safety concern for anyone transiting the Chesapeake Bay within a 500-yard radius of the motor vessel EVER FORWARD. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the damage assessment and salvage operations are being conducted.

### **IV. Discussion of the Rule**

This rule extends the effective dates of an established safety zone, originally established on March 14, 2022 and effective through 9 p.m. on March 20, 2022, through 9 p.m. on April 13, 2022. The safety zone includes all navigable waters within 500 yards of the motor vessel EVER FORWARD. The extended duration of the zone is intended to

protect personnel, vessels, and the marine environment in these navigable waters while damage assessment and salvage operations are conducted. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size of the safety zone, which will impact only vessel traffic required to transit certain navigation channels of the Chesapeake Bay for a total of no more than 30 days. Although this waterway supports both commercial and recreational vessel traffic, portions of the federal navigation channel in the Chesapeake Bay will be opened as damage assessment and salvage operations allow. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their

fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the

various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone that prohibits entry within 500 yards of the motor vessel EVER FORWARD. It is categorically excluded from further review under paragraph L60(d) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket.

For instructions on locating the docket, see the ADDRESSES section of this preamble.

### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### **PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Add § 165.T05-0750 to read as follows:

#### **§ 165.T05-0750 Safety Zone; Chesapeake Bay, Craighill Channel, MD.**

(a) *Location.* The following area is a safety zone: All navigable waters of the Chesapeake Bay, within a 500-yard radius of the motor vessel EVER FORWARD during damage assessment and salvage operations.

(b) *Definitions.* As used in this section---

*Captain of the Port (COTP)* means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

*Designated representative* means any Coast Guard commissioned, warrant, or petty officer, including a Coast Guard coxswain, petty officer, or other officer operating a

Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Maryland-National Capital Region (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone number 410-576-2693 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced from 9 p.m. on March 20, 2022, through 9 p.m. on April 13, 2022.

Dated: March 17, 2022.

David E. O'Connell,  
Captain, U.S. Coast Guard,  
Captain of the Port Sector Maryland-NCR.  
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